

IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH AT HYDERABAD.

HON'BLE SRI JUSTICE V.V. S. RAO

Writ Petition No.18438 of 2005

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Dated: 31st August 2005

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Between:

Anasuri Udaya Kumar ... Petitioner

And

The Commissioner,
Alwal Municipality,
Ranga Reddy District.
... Respondent

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Oral Order:

The petitioner is a resident of Alwal in Ranga Reddy District. He purchased a small house along with appurtenant land of 146 sq. yds. in Plot No.43 of Hanuman Nagar Colony, Venkatapuram, Alwal Municipality, under a registered sale deed from one Mr.B. Satyanarayana. He made certain alterations in 1997 to the structures, which were regularized by the respondent Municipality by proceedings

dated 11-11-1997. He again approached the Municipality for construction of the first floor of the building. By proceedings dated 26-11-2002 the respondent accorded permission, by reason of which the petitioner completed construction and staying in the house by regularly paying the municipal tax.

The respondent issued the impugned notice dated 12-8-2005, which is self-explanatory and reads as under:

The President of Hanuman Nagar Colony Habitation Committee submitted a representation vide reference cited duly enclosing a copy of layout plan wherein it is stated that the colony roads and parks are being encroached by unauthorized constructions and requested this office for taking action on the said constructions.

Acting upon the said representation, this office staff visited Hanuman Nagar Colony, verified and measured the existing houses with reference to the layout plan. It is found that Sri Uday Kumar has encroached on the road of road beyond his plot area.

Therefore, Sri Uday Kumar is hereby directed to remove the said illegal encroachment within (3) days. Otherwise, this office will remove the same and expenses so incurred will be recovered from the encroached.

The above notice is issued under Sections 192 and 37 of the A.P. Municipalities Act, 1965 (for short 'the Act') calling upon the petitioner to remove the illegal encroachment within three days and the same was not preceded by any notice. Therefore, it is rightly contended by the learned counsel for the petitioner that if only a notice would have been issued, the petitioner would have placed all material before the respondents to show that his possession does not amount to encroachment.

After hearing the learned counsel for the petitioner and the learned Standing Counsel for Municipalities, this Court is of the considered opinion that though Section 192 of the Act empowers the Commissioner to remove the encroachments, it does not specifically provide for issue of prior notice. Such a notice has to be read into the said provision so as not to render Section 192 of the Act unconstitutional. Indeed, Section 194, which deals with eviction of encroachers, contemplates issuance of a notice, and therefore, the impugned notice dated 12-8-2005 can be treated as a notice giving liberty to the petitioner to make a representation within a period of one week from the date of receipt of this order enclosing all necessary material. As and when such representation is

made, the respondent should consider the representation/explanation and the evidence that may be produced by the petitioner with reference to municipal record and pass appropriate orders as to whether the petitioner has encroached upon the road beyond his plot area as alleged by the President of Hanuman Nagar Colony Habitation Committee. Till then, there shall be status quo.

The writ petition is accordingly disposed of at the admission stage in the above terms.

(V.V.S. Rao, J)

31st August 2005

svs